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Origin: AMEMBASSY,
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October 24, 1947
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REMTEL 3142 Oct 9 Art V par 2, Dept opposes principle in FCN treaty that rights of withdrawing compensation for expropriated property differ according currency original inve[illegible]nt. In recent cable to Amdol Geneva July 25 concerning proposed ITO investment code Dept also asserted US adherence policy Art V, par 2.

Aside from principles involved, simple rule without differentiation offers following advantages: (a) avoiding delays investigating each individual case concerning method original investment, especially serious when records lacking or destroyed; (b) avoiding needless disputes [illegible] interpreting currency of investment even from established facts regarding complicated situations, such as investments through third or fourth country subsidiaries, re-investments profits from multi-origin capital, part investment from transfer of assets or equipment from various countries, patent assignments, use foreign techniques and know-how, or shifting international boundaries; (c) avoiding administrative complications and special commissions for fact-finding,

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finding, interpretation and arbitration disputes; (d) permitting both govts readily determine approximate foreign exchange required for compensation resulting from proposed expropriation. Furthermore, probably most frequent cases expropriation would affect only one or few nationals other country, compensation for which should be settled by speedy action of simple nature already determined by FCN treaty instead complicated procedure which might require commission for minute historial investigation nature and extent original investment. Finally, simple rule gives US govt superior bargaining position in case widespread expropriations, as by nationalization law, leads to necessity future compensation negotiations.

True that present compensation negotiations with Poland and Czecho based on differentiation according currency original investment; but not precedent for FCN treaty. In Polish and Czecho cases Dept dealing with difficult settlement extensive nationalization programs and under necessity making best obtainable arrangement for already expropriated property Americans many of whom had become US citizens subsequent to beginning war. Circumstances appear different in formulating basic FCN treaty in case Italy.

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As Embassy emphasized, basic problem not (repeat not) exchange control but rather assuring former owner just and effective compensation. Withdrawal formula (second sentence, par 2) constitutes subsidiary feature which explicitly states logical inference as to implementation such basic assurance. Dept considers IMF reservation in general exceptions Art - amply safeguards Italy against any exchange difficulties related to withdrawals and thus should justify Ital acceptance US position. (See Deptel 1979, Oct. 7.)

Exact wording provision withdrawal formula fixing date governing applicable exchange rate reflects merely drafting convenience. Dept does not insist upon exact wording if Itals have some suitable way of revising or restating so long as basic assurance burden of exchange depreciation not borne by foreign investor remains safeguarded. For example, would be agreeable to devise some system of automatically dating applications as of time of taking, though Dept foresees technical difficulties in making viable and fool-proof formulation. Another possibility would provide that valuation at time taking itself shall be in terms dollars, which recognized in IMF Agreement as internationally acceptable measure of value.

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Dept notes with approval Emb emphasis on desirability retaining assurance of most favorable exchange rate prevailing rather than rate applicable capital transfers in multiple rate system.

Art VII, par 2. Emb authorized delete last sentence, as requested, on basis Ital representation and without prejudice.

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